

### **REMARKS**

The Office Action dated July 11, 2003 has been reviewed and the Examiner's comments carefully considered. Claims 1 and 21 are independent. Claims 1, 8-22, 24, and 25 have been amended, and Claims 26-28 have been added. Claims 1, 7-22, and 24-28 are pending and submitted for reconsideration. Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

#### **Figures**

Figures 1-12 have been amended to recite "Prior Art" as suggested by the Examiner.

#### **Claim Objections**

The Office Action objects to Claims 4-20 for failing to comply with the numbering requirements of 37 CFR 1.126. Claim 4 (renumbered Claim 9) was objected to for a misspelling informality. In reply, Claims 4-20 have been renumbered as Claims 7-25, respectively, and claim dependency has been amended accordingly. Renumbered Claim 9 has been amended so that the word "party" now is spelled "partly." Reconsideration and withdrawal of the objections are respectfully requested.

#### **35 U.S.C. 112, First Paragraph Rejection**

Claims 21-25 are rejected under 35 U.S.C. 112, first paragraph, for failing to comply with the written description requirement. The Office Action states that the specification contains no basis for the limitation of providing a cartridge that is in the filled and closed situation of the container at least partially filled with a second gas under pressure in the previously added method claims.

Applicants have amended claim 21 to recite the step of "accommodating a cartridge in the container, the cartridge being at least partially filled with a second gas under pressure serving as foaming medium." Page 2, lines 11 to 32; page 3, lines 3 to 34; and page 4, lines 5 to 18 describe providing a cartridge that is at least partially filled with a second gas under pressure. Reconsideration and withdrawal of the rejection is, therefore, respectfully requested.

35 U.S.C. 112, Second Paragraph Rejection

Claims 1 and 7-25 are rejected under 35 U.S.C. 112, second paragraph, for being indefinite. Applicants traverse these rejections for at least the following reasons.

Claim 1

The Office Action rejects Claim 1 as indefinite with regard to the phrases “for instance aluminum, ..., or other plastic” and “the filled and closed situation.” Claim 1 has been amended to delete the phrase “for instance aluminum, ..., or other plastic,” and to delete the phrase “the filled and closed situation.”

Claim 7

The Office Action rejects Claim 7 as indefinite because the scope of the phrase “aromatic component” is unknown. Applicants respectfully refer the Examiner to page 4, lines 27-38, of the application, which describe the aromatic component. In addition, an aromatic component is commonly understood in the art to be a component having an aroma or fragrance.

Claim 8

The Office Action rejects Claim 8 as indefinite because the scope of the phrase “general shape of a beaker” is unknown. The phrase “general shape of a beaker” appears in WO 96/31409 (Brilman et al.) at page 1, lines 1-19. In addition, Brilman et al. describes and illustrates a representative beaker shape at page 7, lines 34-36, and in Figure 8.

The Office Action states that the phrase “the edge zone” in Claim 8 lacks proper antecedent basis. Claim 8 has been amended to address the lack of antecedent basis for the phrase “the edge zone.”

Claim 9

The Office Action rejects claim 9 as indefinite because the scope of the phrase “party (sic) undercut peripheral zone” is unknown. The specification discusses the phrase “partly undercut peripheral zone” on page 5, lines 35-37 to page 6, lines 1-5, and a representative

example of a partly undercut peripheral zone of a container base can be seen in Figures 2 and 6. In addition, this phrase appears in WO 96/31409 at page 2, lines 25-32, which discuss an “at least partly undercut peripheral zone.”

The Office Action states that the phrase “which edge zone” in Claim 9 lacks proper antecedent basis. The phrase “which edge zone” does have proper antecedent basis in line 3 of Claim 9 and in line 7 of Claim 8.

Claim 10

The Office Action rejects Claim 10 as indefinite because the scope of the phrase “snap means” is unknown. The meaning of “snap means,” however, can be understood from the specification, for instance at page 5, lines 27-34 and page 6, lines 6-10.

Claim 11

The Office Action rejects Claim 11 as indefinite because the scope of the phrase “compressed at least partially” is unknown. Applicants respectfully refer the Examiner to page 6, lines 11-16, of the application.

Claim 12

The Office Action rejects Claim 12 as lacking antecedent basis for the phrase “the outside.” Claim 12 has been amended to clarify that “the first passage has a form narrowing toward an area outside of the cartridge.”

Claim 19

Applicants respectfully request clarification of this rejection. The Office Action states that the scope of the phrase “” is unknown.

Claim 20

The Office Action rejects Claim 20 as indefinite with regard to the phrase “for instance a lacquer coat.” Claim 20 has been amended to delete the phrase “for instance a lacquer coat.”

Claims 21 and 23

The Office Action rejects Claims 21 and 23 as indefinite because the scope of the phrase “substantially insoluble” is unknown. According to PEP 2173.05(b), the use of the word “substantially” has been found to be definite when, for example, the specification includes general guidelines. The present application discusses the phrase, giving guidelines, on page 3, lines 3-6 and lines 14-16. The application compares nitrogen gas and nitrous oxide and states that nitrogen gas is not “very readily soluble in water or in aqueous solution or in mixture,” while “nitrous oxide has...great solubility in aqueous substance.”

For at least the above reasons, applicants submit that claims 1, 7-22, 24, and 25 comply with 35 U.S.C. 112, second paragraph.

Prior Art Rejections

Claims 1 and 7-23 are rejected under 35 U.S.C. 102(b) as anticipated by Brilman et al. (WO 96/31409). Applicants traverse this rejection for at least the following reasons.

Claim 1 defines a container where the “container is filled with a liquid” and a first gas is dissolved in the liquid; a cartridge, present in the container, is “at least partially filled with a second gas;” “the first gas is nitrous oxide;” and “the second gas is substantially insoluble in the liquid.” Brilman et al. does not disclose a container filled with a liquid in which nitrous oxide is dissolved, and a cartridge partially filled with a gas that is substantially insoluble in the liquid, as required by claim 1. Accordingly, Brilman et al. does not anticipate Claim 1 or its dependent claims.

Claim 21 recites the step of “accommodating a cartridge . . . at least partially filled with a second gas . . . , the second gas being substantially insoluble in the liquid.” Applicants disagree with the statement in the Office Action that the “second gas in the cartridge will be that which comes out of the liquid” because nitrogen, the gas disclosed in Brilman et al., is only sparingly soluble. An insoluble gas cannot come out of solution and “be exchanged with that present in the cartridge.” Because Brilman et al. does not teach or suggest the claimed beverage container, Brilman et al. does not anticipate Claim 21 or its dependent claims.

Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as unpatentable over Brilman et al. in view of Dunn (WO 96/33618). Applicants traverse this rejection for at least the following reason.

Claims 24 and 25 are dependent on claim 21. Claim 21 is patentable over Brilman et al. for at least the above-stated reason. Dunn does not cure the deficiencies of Brilman et al. For example, Dunn does not teach or suggest the step of “accommodating a cartridge . . . at least partially filled with a second gas . . . , the second gas being substantially insoluble in the liquid.” Accordingly, applicants submit that Claim 21, and hence its dependent Claims 24 and 25, are patentable over Brilman et al. and Dunn, either alone or in any reasonable combination.

#### Conclusion

In view of the foregoing amendments and remarks, Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 CFR §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or

even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 CFR §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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